

VZCZCXRO2995  
PP RUEHCN RUEHGH RUEHVC  
DE RUEHBJ #2837/01 2040830  
ZNR UUUUU ZZH  
P 220830Z JUL 08  
FM AMEMBASSY BEIJING  
TO RUEHC/SECSTATE WASHDC PRIORITY 8703  
INFO RUEATRS/DEPT OF TREASURY WASHDC  
RUCPDOG/USDOC WASHDC  
RUEHOO/CHINA POSTS COLLECTIVE

UNCLAS SECTION 01 OF 02 BEIJING 002837

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E.O. 12958: N/A  
TAGS: [ETRD](#) [EINV](#) [EFIN](#) [CH](#)  
SUBJECT: U/S PADILLA PUSHES FOR LEGISLATIVE TRANSPARENCY

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11. (SBU) Summary. United States Department of Commerce (DOC) Under Secretary (U/S) Christopher Padilla and USTR General Counsel (GC) Warren Maruyama met with State Council Legislative Affairs Office (SCLAO) Vice Minister Zhang Qiong on July 16 to discuss SED 4 transparency initiatives and raise concerns over issues pertaining to China's release of draft postal, patent and telecom laws. VM Zhang agreed to a proposal by U/S Padilla and GC Maruyama that experts from the two sides hold technical discussions over the United States's concerns with each of the draft laws. VM Zhang also welcomed a United States proposal to reconvene the Intellectual Property Rights (IPR) Working Group under the Joint Commission on Commerce and Trade (JCCT) prior to the next JCCT in mid-September. Noting the complexity of issues with China's draft telecom law, VM Zhang said it would be difficult to move the law forward to the National People's Congress (NPC) anytime soon. VM Zhang also inquired about dates for the next United States-China Legal Exchange to discuss transparency issues and thanked the United States side for adding valuable input into drafting China's Antimonopoly Law (AML). End Summary.

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Implementing SED 4 Transparency Initiatives  
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12. (SBU) VM Zhang opened by stating SCLAO plans to hold several meetings on transparency in preparation for the next United States-China Joint Legal Exchange and would follow through on commitments made at SED 4, but did not specifically mention which commitments. Since returning from SED 4, Zhang said SCLAO sent a circular to Chinese ministries instructing them to submit draft ministerial rules for publication on the SCLAO website which would contain a direct link to the respective ministries legal departments in an effort to improve regulatory transparency. VM Zhang stated much work remains in implementing transparency initiatives, however, and welcomed further exchanges on effective methods for responding to the various public comments on recently released draft regulations. U/S Padilla and GC Maruyama thanked VM Zhang for his efforts to improve regulatory transparency and stated China should expect more comments on draft regulations from the United States side as more regulations are publicized on Chinese government websites.

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The Draft Postal, Patent and Telecom Laws  
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13. (SBU) U/S Padilla requested further clarification regarding China's draft Postal Law, particularly potential provisions that might exclude foreign freight forwarders from delivering documents within China. U/S Padilla and GC Maruyama both emphasized that, should such a provision be included in the Postal Law, it could raise serious questions over China's commitment to national treatment in its WTO accession agreement. In addition, such a provision would seem to be inconsistent with former Vice-Premier Wu Yi's previous JCCT commitments on express delivery. VM Zhang insisted that China's draft Postal Law is consistent with China's WTO commitments, stressing that express delivery would remain open to foreign firms, but that mail delivery would be subject to a monopoly, as it is in the United States and most other countries. When pressed by U/S Padilla and GC Maruyama on the details and on distinctions between letter and document delivery, Zhang said that such questions would need to be addressed by experts. He agreed to a suggestion that a discussion between United States and Chinese experts on these issues be arranged soon. Stressing the importance of having such an exchange before the SCLAO forwards the draft law to the NPC, U/S Padilla said the United States side would provide a letter to Zhang as soon as possible outlining the United States's specific concerns so that China's experts would be prepared for a discussion.

14. (SBU) VM Zhang welcomed both the idea of reconvening the JCCT IPR Working Group prior to the next JCCT meeting in mid-September and incorporating discussions on China's draft Patent Law within that IPR Working Group. U/S

BEIJING 00002837 002 OF 002

Padilla thanked Zhang for responding to Under Secretary of Commerce and Director of the United States Patent and Trademark Office Jon Dudas' letter on the draft Patent Law and emphasized the need for further exchanges on the Patent Law prior to the draft Patent Law being passed to the NPC. U/S Padilla also conveyed Ambassador Randt's regards and expressed hope that VM Zhang would participate in the Ambassador's annual IPR Roundtable scheduled for later this fall.

15. (SBU) In response to U/S Padilla's question about how the draft Telecom Law would lower capitalization requirements for establishing telecommunication companies, VM Zhang noted that the Telecom Law was extraordinarily complicated, involving everything from Internet, broadcast and television, to publishing. Even though it had already been in the works for several years, much more interagency coordination and consultation would be needed before it would be ready to be forwarded to the NPC. Zhang noted that the United States has over 100 years experience in the area of telecommunication, compared with China's several years experience, hence China would need more time to formulate a telecom law acceptable to all parties

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United States-China Legal Exchange  
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16. (SBU) Zhang praised previous United States-China legal exchanges and inquired as to when the Department of Commerce-led United States-China Joint Legal Exchange would next be held. U/S Padilla said the dates for such an exchange were not yet confirmed. He also suggested that when the next round is held, he would be happy to facilitate meetings between VM Zhang and other relevant United States authorities within the Department of Commerce, United States Trade Representative, and the Office of Management and Budget to explain how the United States ensures legislative and regulatory transparency and discuss ways China can implement transparency initiatives. Zhang praised the Joint Legal Exchange as an effective means to further cooperation and welcomed the opportunity to

participate. He also thanked the United States side for adding valuable input into drafting China's Antimonopoly Law.

¶17. (U) U/S Padilla and GC Maruyama were accompanied by AUSTR for China Tim Stratford and DOC Deputy Assistant Secretary Ira Kasoff. VM Zhang was accompanied by SCLAO Director-General of Foreign Affairs Wu Hao, Deputy Director-General of Industry, Communication, and Commerce (ICC) Guo Qiwen, Division Director of ICC Zhang Yaobo, and Division Director of the General Office Hu Zhenjin.

¶18. This cable has not yet been cleared by U/S Padilla or GC Maruyama.

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